IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 485 of 2005

Between:

The Commercial Tax Officer-II, Proddutur,

Kadapa District.

..... PETITIONER

AND

P. Subbarayudu, S/o. P. Subbvanna,
O/o. Commercial Tax Officer-II, Proddutur,

Kadapa District. **.....RESPONDENT**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of "Certiorari" and calling for the records relating to the orders of the Hon'ble A.P. Administrative Tribunal, Hyderabad Passed in O.A.No.8485/98 with VMA No. 160/99, dt. 19-2-2004 and quash the same.

Counsel for the Petitioner: GP FOR SERVICES II

Counsel for the Respondent:Mr.M.Ratna Reddy, Advocate.

The Court at the admission stage made the following:

–

–

–

–

–

–

–

–

–

–

–

<u>O R D E R</u>:- (per GB,J)

The Writ Petition is filed by the petitioner challenging the Order, dated 19-02-2004, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.8485 of 1998 with VMA.No.160 of 1999.

2. The respondent herein worked as Attender on daily wage basis for the period from 30.11.1986 to 28.12.1986. During the said period, when the Government employees went on strike, the Government issued G.O.Ms.No.69, GAD, dated 18.02.1987 to give preference to the candidates, who worked during the strike period in the matter of employment. The writ petitioner herein did not take any steps in that regard. Therefore, the respondent filed W.P.No.6232 of 1996 seeking a direction to the writ petitioner-respondent therein, to consider his case for appointment and absorption as Attender in terms of the above referred G.O.

3. The said writ petition was disposed of by this Court at the stage of admission directing the writ petitioner-respondent therein to consider the case of the respondent herein in the light of G.O.Ms.No.69, GAD dated 18.02.1987. Basing on the said order, the appointing authority issued orders, dated 28-06-1996, appointing the respondent herein as attender in the office of the Commercial Tax Officer-I, Proddatur. However, having realized that the appointment did not conform to the normal rules of recruitment, at the instance of the higher authorities a show cause notice, dated 05.11.1998, was issued calling upon the respondent herein to show cause as to why his services should not be terminated on the ground that it was in violation of the recruitment rules. Challenging the said show-cause notice, the respondent herein filed the O.A.No.8485 of 1998. While admitting the O.A., the Tribunal granted interim stay, dated 02.12.1998 and ultimately allowed the O.A. by order, dated 19.02.2004, against which, the present writ petition has been filed by the Government.

4. The learned Government Pleader appearing for the writ petitioner submits that the very appointment of the respondent herein is contrary to the Rules and what was ordered in G.O.Ms.No.69 is that preference should be given in the matter of employment to the persons who worked on daily wage basis during the strike period, but it cannot be construed that such persons should automatically be appointed when there are any candidates from other source *viz*., from the employment exchange etc.,

5. The learned counsel for the respondent herein submits that the respondent was only the person, who was called and his testimonies were verified and as

the respondent fulfilled all the qualifications required for the post of Attender, he was appointed immediately after the directions issued by this Court in the writ petition in W.P.No.6232 of 1996.

6. It is not in dispute that the respondent worked as an Attender on daily wage basis. But, however, the G.O.Ms.No.69 was issued by the Government only to give preference to such of those candidates, who worked during the period of strike on daily wage basis, but it does not mean that the process should be given a go bye. The appointment should have been made after giving opportunity to the candidates who come from other sources. But, in the instant case, such a procedure was not followed. Therefore, we find some flaw in the appointment itself. But, the situation is now changed. The respondent was appointed in the year 1996, but the show-cause notice was issued on 05.11.1998 and the respondent was continued in service by virtue of the interim order passed by the Tribunal and thus, he has completed nearly nine years of service. At this distance of time, even though the appointment is not in accordance with the Rules, we are not inclined to disturb the same for the reason that the respondent will be denied the employment throughout his life as he may be beyond the maximum age.

7. Under those circumstances, even though, we do not agree with the reasoning given by the Tribunal, we are not inclined to disturb the appointment that was already given.

8. Accordingly, the writ petition is dismissed. No costs.

_____

G.BIKSHAPATHY,J

_____

P.S.NARAYANA,J

Date: 09-02-2005

Prv

To

1. The Commercial Tax Officer-II, Proddutur, Kadapa District.

1. Two CCs to G.P. for Services II, High Court of Andhra

Pradesh, Hyderabad (OUT).

2. Two CD copies.